

**INQUIRY INTO WORKERS COMPENSATION
AMENDMENT BILL 2021**

Organisation: Unions NSW
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Upper House committee inquiry into bill to restrict claims for workers compensation for COVID

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Introduction

Unions NSW welcomes the opportunity to make a submission to the Upper House committee inquiry into bill to restrict claims for workers compensation for COVID.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 60 0000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

Unions NSW would welcome the opportunity to participate in further consultation or any 'in person' Parliamentary inquiry.

Unions NSW coordinates a campaign/support network for injured workers. These injured workers would also welcome the opportunity to provide information to the Upper House committee with Unions NSW. Some will provide the Upper House committee with their own submissions or will complete the questionnaire. The lived experience of these injured workers provides Unions NSW with a valuable insight into the experience of the injured worker in NSW navigating the workers compensation scheme. We base much of our feedback on their experiences and that of our affiliate unions.

- **Bill to restrict claims for workers compensation for COVID**

Unions NSW does not support the Bill. We strongly oppose it.

Unions NSW was a strong supporter of s19B when it was introduced in 2020. During this period all workers who were unable to work from home were very relieved to know that should they contract COVID while undertaking essential work, the NSW State Government would support them. The feedback unions received from workers was overwhelmingly positive. Unions were inundated with calls from concerned and scared workers who knew they were in some

cases risking not only their own lives but that of their loved ones, and s19B gave these workers a degree of peace of mind.

Unions NSW is extremely concerned about the Bill that will restrict COVID 19 presumptive workers compensation claims for essential workers. These concerns are outlined below.

- **Global pandemic not over**

Despite the relaxing of restrictions based on public health orders the COVID-19 global pandemic has not ended. COVID -19 is still spreading in the community and is still a global concern. Case numbers are rising in the Northern Hemisphere as winter approaches.

Unions NSW is concerned that Australia will find itself in a situation like that of Europe and other countries in the Northern Hemisphere, which will see an increase in cases, hospital admissions and deaths as a result of increases in COVID-19 case numbers as winter approaches and vaccination efficacy wanes during March & April of 2022.

Modelling by Ozsage suggests that once restrictions are lifted on 15 December 2021, even with 95% of the eligible population fully vaccinated, experience shows that cases surge. There is uncertainty about what the effects of lifting restrictions will have on the general population as well as the health sector. Union affiliates representing those working in the health sector have expressed concerns in relation to this.

Unions NSW acknowledges that the extension we were granted in lodging this submission has provided us with an opportunity to witness the result of the lifting of restrictions on December 15 2021. We have been given an insight into what it means to 'live with Covid' minus all safety controls previously in place and relying primarily on vaccinations.

Both the Omicron and Delta variant are raging throughout NSW and many citizens feel they have no choice but to isolate. The removal of control

measures, daily press-conferences providing sound medical advice, and surging case numbers have left people feeling isolated and abandoned by the Government. Anecdotally many people feel let down by the Government which has now left its citizens to manage Covid-19 on its own. Or in the Government's words, take personal responsibility. The focus on appeasing some business groups appears at this stage to have failed many in the business community as people now attempt to limit their exposure to the virus by limiting their movements in the community. Many people will not risk their health or the health of their loved ones during this third wave and are choosing to remain at home as much as possible, order goods online etc. as was done during the lockdown period. The result of letting the virus surge has been that of an unintended lockdown initiated by many individuals.

Workers who are sick cannot and should not attend work if sick. The virus will continue to surge if asymptomatic workers do not isolate. These workers should be supported by the Government to isolate for the necessary period and s19B allowed for this & provided a degree of support to workers with Covid-19. The Government should not be insisting that Covid-19 asymptomatic workers attend work. This is foolish and does not comply with requirements under the Fair Work Act s343 relating to coercion. A worker with a medical certificate should not be coerced into working. A worker who is Covid-19 positive but asymptomatic should not be working as this will assist in the spread of the virus. This can be fatal if the virus is passed onto someone who is disabled, ill, elderly, or immunocompromised. The Government must continue to support workers to isolate and recover.

If the purpose of this Bill is to 'help' business, the Government's strategy thus far does not appear to have done this. Health must trump the interests of business.

At the start of the new year, 2022, Covid 19 cases are at unprecedented levels. NSW has never experienced case numbers at this level. Hospitals, GPs, chemists and our health system is struggling. The control measures in place up until recently kept case numbers relatively low, along with Australia's geographical isolation and strict border controls. While a small but extremely

vocal number of citizens objected strongly to Public Health Orders or safety control measures, the majority of citizens followed Public Health Orders without question and felt that the primary role of Government should be to protect its citizens. Many found comfort and reassurance in daily press conferences providing very detailed health-based information. The Government did throw extensive resources at Covid-19 to keep the public safe and informed. The cost of keeping our society safe and informed during a once in a generation pandemic should not be of primary concern. Previous generations of Australians have lived through a global pandemic (1918), a global depression and two World Wars, and a significant number of economists agree that higher public debt burdens should not be a concern in the process of supporting the economy during global disasters of such magnitude.¹ The cost associated with protecting and informing citizens should not be the focus of this Government.

Even those supporting lower desired debt levels expressed little concern about debt sustainability in the current circumstances. The low real interest rate environment was a common argument for putting public debt concerns to the side. As Roger Farmer (University of Warwick) puts it: "In the current low interest rate climate, there should be no limit on the size of a temporary fiscal expansion." Sir Charles Bean likens the coronavirus crisis to a "war", in the sense of it being a "classic shock that warrants a temporary period of (possibly much) higher borrowing". He argues that debt levels should be "put onto a gently declining path in order to create more fiscal headroom for when the next adverse shock comes along—as it inevitably will".²

As cases reach unprecedented levels in NSW now is not the time to withdraw financial support or implement a Bill that will withdraw support to workers through the workers compensation system.

- **Unvaccinated Children under 12**

Concerns also exist for those under 11 years of age who are not vaccinated. While generally children do not suffer severe symptoms, some with comorbidities have suffered more severe symptoms and in some cases death.

¹ Ethan Iizetzki, *COVID-19: The economic policy response*. Article abstract (2020).

² *ibid*

Asthma was recognised as a comorbidity that increases the risk of death and admission to hospital with COVID-19 in adults early in the pandemic.

Subsequently, asthma was identified as a comorbidity that increases the risk of severe disease (admission to critical care, receiving invasive ventilation, or death) in hospitalised children.

However, although deaths of children with asthma and SARS-CoV-2 infection have been reported, the deaths have been attributed to complex comorbidity rather than asthma as a sole diagnosis.³

Although deaths have been attributed to comorbidities studies are limited and ongoing and this would be of little comfort to the parents of these children.

Recent studies by Harvard University suggest that children presented with a high viral load, regardless of symptoms. Children infected with the virus had as much, or more, coronavirus in the upper respiratory tracts as adults. Suggesting that children carry live virus and are capable of infecting others.

Workers who work with unvaccinated children could be infected by these children and need to know that they will be supported by the workers compensation scheme if they are infected.

- **Reliance on Doherty Institute Modelling**

The Government has relied heavily on the modelling of the Doherty Institute, the most extensive epidemiological modelling in Australia related to Covid-19, to make policy decisions. The Doherty Institute itself has warned against this as modelling is based on different scenarios and cannot be considered quantitative predictions. The Institute responds and adapts to the changing nature of the virus and any Government policies or decisions must accept the vast uncertainty of future epidemic behaviour and acknowledge the uncertainty of the situation.

The Government claims the removal of s19B is based on Doherty modelling which foresees a surge in claims as Australia moves into winter 2022 and vaccination efficacy wanes. In this regard the Government is responding to business concerns around the cost of premiums as cases surge.

Clearly neither business nor the Government wants to take any responsibility for the possible surge in claims. Or what we now know to be an actual surge in cases which may result in a surge in claims. Unions NSW urges the NSW Government to take responsibility for the surge in cases and the possibility of an increase in claims and provide the financial support workers need when they are sick or isolating.

A more effective way of minimising claims would be to minimise cases by re-instating some safety measures to control the spread of the virus, rather than allowing the virus to rapidly spread while passing on the cost of this surge to the workers and citizens of NSW.

- **New variants – Omicron**

The new variant Omicron first detected in late November has spread rapidly around the world in two months. Scientists have warned of mutations and there is no way of knowing whether there will be more mutations and whether these will pose the kind of serious threat Delta posed. A more benign mutation may as some scientists have suggested, lead to the end of the pandemic, but we do not know yet how this virus will progress, and it is too early to make predictions based on the wishes or demands of some business lobby groups. All decisions made by the Government should be based on sound scientific advice and all efforts to support the citizens of this State should remain in place.

- **Waning of vaccination efficacy & Booster Shots**

Unions NSW supports the science that encourages vaccination. Vaccinations have eliminated numerous diseases over the past century & no doubt have played a role in the increase in life expectancy in OECD countries.

The number of vaccinations required to either eliminate Covid 19 or minimise the harm done by this virus is still unknown. It is becoming clearer that two vaccinations are not enough and that at about the six-month mark post the second vaccination the efficacy of the vaccination begins to wane. In response

to this booster shots are now being administered and may need to be defined as third vaccinations. Israel is now issuing a fourth vaccination.

At this stage not enough is known about how many vaccinations will be required to control Covid-19. We do not know how long it will take to provide 'booster' shots or 'third vaccinations' to the majority of the citizens of NSW. We do not know if a fourth vaccination will be required. From Israel's experience it would seem a likely possibility. Once the efficacy of the second vaccinations begins to wane for a large number of the vaccinated population, we do not know if Covid-19 death rates and serious hospitalisations will increase. Given these uncertainties it is premature to remove s19B

- **Vulnerable workers & citizens**

Citizens who are disabled, immunocompromised, have underlying health conditions or are elderly may not gain the same level of protection from the vaccinations as those citizens who are young and healthy. These citizens deserve to remain protected by this Government. Many already feel vulnerable and feel their lives are not given great value as no mention has ever been made of looking after the vulnerable in our society. This Darwinian approach is frightening and hurtful for these people.

Encouraging sick workers to attend work will make life more difficult for these people. A trip to receive non-Covid-19 related medical treatment could result in such people catching Covid-19 from asymptomatic workers. Not providing a guaranteed income for a worker, with symptoms or not, will mean workers who have no paid sick leave but are sick, will attend work. Vulnerable people will be placed at great risk if sick workers are not supported to isolate. This may well result in death or Long Covid-19 for the vulnerable within our community.

- **Removal of Control Measures**

Unions NSW strongly opposed the removal of control measures after December 15, 2021. Unions NSW strongly supports the re-instatement of some control measures. The prevention of accidents, injuries and illness are either eliminated or where they can't be eliminated, they are minimised. To minimise a hazard, control measures are put in place. Control measures are generally layered. To minimise the spread of Covid, lockdowns and the limitation of movement was an effective control measure. Without lockdowns vaccinations alone are insufficient. A number of control measures should be re-introduced to contain the spread of the virus, which will also protect workers and limit the likelihood of workers contracting Covid-19. Mask wearing indoors should be re-introduced when not-eating or drinking. Venues & organisations should have limitations on their capacity to allow for satisfactory physical distancing and greater air circulation, a return to regular press-conferences with health practitioners to provide the public with information and advice and encourage the adoption of safety measures, a greater emphasis on better cleaning of public spaces and workplaces which up until the pandemic were cleaned very superficially, will help manage Covid-19 and other viruses and bacteria. Improved ventilation in public buildings, schools etc.

A layered approach to containing the virus rather than ignoring the virus and leaving workers to deal with the virus alone will contain case numbers which in turn should reduce workers compensation claims.

- **High risk work**

Workers covered by s19B were considered at higher risk of catching Covid-19 due to the nature of their work & their inability to work from home. These workers must physically attend work and mix with members of the public. Some of these people remain unvaccinated and some refuse to adopt reasonable control measures such as mask wearing and social distancing. Workers have no choice now which members of the public they must provide a service to and some of these members of the public will pose a significant risk. Many workers have expressed their frustration and fear now that these members of the public are free to go where they wish. Health workers treat people with Covid-19 and despite vaccinations and PPE the nursing profession

has lost a member of its profession to Covid-19. The nurse who worked in Melbourne contracted Covid-19 through the course of her work. She was fully vaccinated with no underlying health issues. She was wearing PPE and had a better than average understanding of the correct application of PPE and effective hygiene measures, yet this was not enough to save her life. Workers in NSW placing their own lives at risk, as well as friends and family, cannot be abandoned now by this Government.

Unions NSW understands that a worker can still lodge a workers compensation claim should they contract Covid-19, however workers who are already under extreme pressure, many suffering significant anxiety, exhaustion, fatigue and fear, some who may be extremely ill with the virus, would struggle to run a dispute in a workers compensation system that is still extremely adversarial. The cost of doing so would also quite possibly exceed the cost of simply providing coverage to a worker who is able to isolate and recover within a short timeframe and return to work after a two to three week period. It is well known that a quick recovery will assist a quick return to work and this Government should support any initiative that assists in return to work. A drawn-out workers compensation matter which is frightening & litigious will not assist in a quick recovery and return to work and from our experience will often result in a secondary psychological injury.

- **Conclusion**

Unions NSW strongly recommends the rejection of the Bill. The NSW Government must continue to support the citizens of NSW as this pandemic continues. This includes funding the cost of those workers covered by s19B.